UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANNETTE S. RUIZ,

Plaintiff,

v.

MEDTRONIC, INC. et al.,

Defendants.

No. 2:24-cv-00489-TLN-SCR

ORDER

Medtronic, Inc. and Covidien LP (collectively "Defendants") move to dismiss this products liability action. (ECF No. 16.) Plaintiff Annette S. Ruiz ("Plaintiff") opposes and in the alternative, seeks leave to amend. (ECF No. 17.) Defendants filed a reply. (ECF No. 19.) For the reasons set forth below, the court GRANTS Defendants' motion.

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I. BACKGROUND

In June 2021, Plaintiff underwent a surgical procedure for a hysterectomy at Kaiser Hospital. (ECF No. 13 ¶ 13.) During the surgery, a screw or pin from a tool called the Endoclinch Grasper (hereinafter "Grasper tool") "separated from the tool and lodged itself in the plaintiff's body." (*Id.* ¶¶ 14–15.) Following the surgery, Plaintiff experienced pain and loss of quality of life. (*Id.* ¶ 16.) She also underwent continued medical treatment to identify the reasons for her post-surgical pain. (*Id.*)

In November 2021, an x-ray revealed there was an object inside Plaintiff's pelvic cavity "from an unknown source." (*Id.* ¶ 17.) In January 2022, Plaintiff's surgeon informed her the object was a pin or screw that had dropped from the Grasper tool during her procedure. (*Id.* ¶ 18.) A few months later, Plaintiff underwent another surgery to remove the object from her body. (*Id.* ¶ 19.) After this second surgery, "Dr. Apple" told Plaintiff the object came from the Grasper tool and gave her an "exemplar tool[.]" (*Id.*) Dr. Apple also told Plaintiff a defect report had been filed and Kaiser had stopped using the Grasper tool. (*Id.*)

In November 2023, Plaintiff filed suit in the Sacramento County Superior Court against Defendants. (ECF No. 1-2.) Defendants design, manufacture, market, and sell the Grasper tool. (ECF No. 13 ¶¶ 2–3.) Plaintiff alleges the product was defective when it left Defendants' control and was being used in a manner reasonably foreseeable by Defendants at the time Plaintiff was injured. (*Id.* ¶ 22.)

Defendants removed the action on diversity grounds and Plaintiff subsequently filed a First Amended Complaint. (ECF Nos. 1, 13.) Plaintiff alleges three causes of action under California law: (1) strict liability; (2) negligence; and (3) breach of warranty. (ECF No. 13 ¶¶ 23–46.) Defendants now move to dismiss the First Amended Complaint in its entirety. (ECF No. 16.) The motion is fully briefed. (ECF Nos. 17, 19.)

II. LEGAL STANDARD

A motion to dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure ("Rule") 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain

"a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). The factual allegations of the complaint must be accepted as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972). Additionally, the court must give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. *Retail Clerks Int'l Ass'n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege "'specific facts' beyond those necessary to state his claim and the grounds showing entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (internal citation omitted).

Nevertheless, a court "need not assume the truth of legal conclusions cast in the form of factual allegations." *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed factual allegations, "it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Thus, "[c]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss" for failure to state a claim. *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) (citations omitted). Moreover, it is inappropriate to assume the plaintiff "can prove facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 680. While the plausibility requirement is not akin to a probability requirement, it demands more than "a sheer possibility that a defendant has acted unlawfully." *Id.* at 678. This plausibility inquiry is "a context-specific task that requires the reviewing court to draw on its judicial

experience and common sense." *Id.* at 679. Thus, only where a plaintiff fails to "nudge [his or her] claims . . . across the line from conceivable to plausible[,]" is the complaint properly dismissed. *Id.* at 680 (internal quotations omitted).

III. ANALYSIS

Defendants move to dismiss each of Plaintiff's claims for failure to allege specific facts. (ECF No. 16.) According to Defendants, the only factual allegations in the entire First Amended Complaint "are the date of the alleged injury, the place of injury, and the elements of each claim under California law." (*Id.* at 12.) Plaintiff opposes contending the level of specificity Defendants suggest is "unrealistic" and not required at this stage. (ECF No. 17 at 4.) The Court evaluates each claim below.

A. Strict Liability

In the First Amended Complaint, Plaintiff broadly alleges Defendants are strictly liable because they "designed, built, manufactured, marketed, issued warnings, failed to warn, distributed, and sold the [Grasper tool][.]" (ECF No. 13 ¶ 26.) In moving to dismiss, Defendants contend Plaintiff fails to plausibly allege facts to satisfy any of these theories of liability. (ECF No. 16 at 13.) In opposition, Plaintiff argues Defendants "completely ignore" the new facts alleged in the First Amended Complaint. (ECF No. 17 at 5.) A manufacturer is strictly liable for injuries caused by three different types of defects: (1) a manufacturing defect, (2) a design defect, or (3) a warning defect. *Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal. 3d 987, 995 (1991). The Court evaluates Plaintiff's claim under each theory below.

i. Manufacturing Defect

To adequately plead a manufacturing defect under California law, Plaintiff must establish the Grasper tool "differs from the manufacturer's intended result or from other ostensibly identical units of the same product line[,]" *Barker v. Lull Eng'g Co.*, 20 Cal. 3d 413, 454 (1978), and the alleged defect caused the plaintiff's injury, *Soule v. Gen. Motors Corp.*, 8 Cal. 4th 548 (1994). Therefore, to survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff "must identify/explain how the [product] either deviated from [the manufacturer's] intended result/design or how the [product] deviated from other seemingly identical [products]."

Garcia v. Sanofi Pasteur Inc., 617 F. Supp. 3d 1169, 1172 (E.D. Cal. 2022) (citation omitted). Simply alleging the product has a manufacturing defect is insufficient. *Id.*

Here, Defendants argue Plaintiff's manufacturing defect claim should be dismissed because Plaintiff does not even allege or show that a Medtronic product was used during the subject procedure. (ECF No. 16 at 15.) Plaintiff contests this, arguing she did in fact allege a Medtronic product was used. (ECF No. 17 at 7–8.) Specifically, Plaintiff cites the allegations in paragraph fourteen, where she alleges that during her procedure the Grasper tool was used. (ECF No. 13 ¶ 14.) The paragraph goes on to state the Grasper tool "was designed, manufactured, marketed and/or sold by the defendants herein including Medtronic and Covidien." (*Id.*) Reading these two sentences together and drawing all reasonable inferences in favor of Plaintiff, the Court finds Plaintiff has sufficiently alleged a Medtronic product was used during her procedure.

Defendants also argue Plaintiff "fatally ignores causation." (ECF No. 16 at 16.) According to Defendants, Plaintiff needs to have alleged how the defect in the Grasper tool led to the pin or screw being left in her body cavity. (*Id.*) Defendants argue that Plaintiff cannot allege only one possible explanation for her injuries without supporting factual allegations. (*Id.*) Relying on *Barrett v. Atlas Powder Co.*, 86 Cal. App. 3d 560, 564 (1978), Defendants contend causation "cannot be inferred from the mere fact that the product was involved in an accident or injury." (*Id.*) However, Defendants cite *Barrett* out of context. In *Barrett*, the Court of Appeal discussed how liability is established at the summary judgment stage. 86 Cal. App. 3d at 564 ("[T]o establish liability, it is not enough that the action happened, nor may liability inferences favorable to plaintiff be drawn from that fact."). At the motion to dismiss stage, where the Court now finds itself, Plaintiff must be given the "benefit of every reasonable inference[.]" *Retail Clerks Int'l Ass'n*, 373 U.S. at 753 n.6. Here, Plaintiff alleges as a direct result of the defect, the Grasper tool failed during her surgery and resulted in a piece of the product being left inside her, which caused her pain. (ECF No. 13 ¶¶ 27–31; ECF No. 17 at 16–17.) At this stage, the Court finds Plaintiff has sufficiently pleaded causation based on these allegations. *See also Woods v. Davol, Inc.*, No. 16-CV-02616-KJM-CKD, 2017 WL 3421973, at *4 (E.D. Cal. Aug. 9, 2017)

(finding similar allegations sufficient); *Hammarlund v. C.R. Bard, Inc.*, No. 2:15-CV-05506-SVW-JEM, 2015 WL 5826780, at *4 (C.D. Cal. Oct. 2, 2015) (same).

Finally, Defendants argue Plaintiff's manufacturing defect claim fails because she does not allege the way in which the Grasper tool differed from its intended design. (ECF No. 16 at 14–15.) In opposition, Plaintiff acknowledges she must explain how the Grasper tool deviated from the manufacturer's intended design but does not cite to any allegations in the complaint that describe the manufacturing defect. (ECF No. 17 at 5.) Instead, Plaintiff merely reiterates her allegation that the product was defective when it left the control of each Defendant. (*Id.* at 6 (citing ECF No. 13 ¶ 22).) This bare conclusion is not enough to sufficiently allege a strict liability claim premised on a manufacturing defect. *See, e.g. Weaver v. Ethicon, Inc.*, 737 F. App'x 315, 317 (9th Cir. 2018) (unpublished) (affirming dismissal of manufacturing defect claim in part because there were no allegations about the nature of the manufacturing defect); *Hammarlund*, 2015 WL 5826780, at *4 (finding allegation that Defendants' product was found in six pieces after it was implanted in Plaintiff was insufficient to establish a manufacturing defect); *cf. Woods*, 2017 WL 3421973, at *5 (denying motion to dismiss manufacturing defect claim because Plaintiff described the product defect).

Accordingly, to the extent Plaintiff seeks to bring her strict liability claim based on a manufacturing defect theory, such a claim is DISMISSED with leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (stating "[l]eave to amend should be granted if it appears at all possible that the plaintiff can correct the defect" (internal quotation marks and citation omitted)).

ii. Design Defect

There are two separate ways to establish a design defect claim under California law. First, under the "consumer expectations test" a product's design is defective if the product fails to "perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner." *Webb v. Special Elec. Co.*, 63 Cal. 4th 167, 180 (2016) (internal citations omitted). Second, under the "risk-benefit test" a product's design is defective if "the risk of danger inherent in the product's design outweighs the design's benefits." *Id.*

Defendants contend Plaintiff's First Amended Complaint does not contain clear allegations about a safe and feasible alternative design. (ECF No. 16 at 17.) Additionally, Defendants argue Plaintiff "makes no effort to show" the Grasper tool violated minimum safety expectations of an ordinary consumer or contained dangers which outweighed its benefits. (*Id.* at 18.) Without these allegations, Defendants argue Plaintiff's strict liability claim premised on a design defect theory fails. (*Id.*) Defendants also argue Plaintiff fails to sufficiently allege causation, but as discussed above, the Court finds Plaintiff's allegations on this point sufficient.

In opposition, Plaintiff argues her First Amended Complaint clearly alleges how the Grasper tool violated minimum safety expectations and again reiterates her allegations. (ECF No. 17 at 8.) Specifically, Plaintiff contends the Grasper tool did not perform "as safely as an ordinary consumer would have expected it to perform" because a screw or pin separated from the tool during her surgery. (ECF No. 17 at 11; ECF No. 13 ¶ 15.) Based on this, the Court presumes Plaintiff's defect theory is based on the "consumer-expectations test." In reply, Defendants maintain Plaintiff provides no factual allegations to support a design defect theory under either of the two tests. (ECF No. 19 at 8.)

In *Lucas v. City of Visalia*, which both parties cite in support of their respective arguments, the court dismissed the design defect claim because the plaintiff neither *described how* the product at issue failed to meet the ordinary consumer's safety expectations nor *explained how* the particular product design caused plaintiff harm. 726 F. Supp. 2d 1149, 1155 (E.D. Cal. 2010). Here, Plaintiff makes similar failures. While she does allege a pin or screw separated from the Grasper tool, there are no allegations regarding *how* this failed to meet the minimum expectations of the ordinary consumer. (ECF No. 13 ¶ 15.) Without such allegations, Plaintiff does not sufficiently allege a plausible design defect.

Accordingly, to the extent Plaintiff seeks to bring her strict liability claim based on a design defect theory, such a claim is DISMISSED with leave to amend. *Lopez*, 203 F.3d at 1130.

iii. Failure to Warn

Under California law, a manufacturer is liable for strict liability under a failure to warn theory if Defendants "did not adequately warn of a particular risk that was known or knowable in

light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution." *Carlin v. Superior Ct.*, 13 Cal. 4th 1104, 1112 (1996). California also applies the "learned intermediary" doctrine, which provides that the duty to warn in the case of medical devices runs to the physician — not the patient. *See Zetz v. Bos. Sci. Corp.*, 398 F. Supp. 3d 700, 706 (E.D. Cal. 2019) (citing *Carlin*, 13 Cal. 4th at 116).

Defendants argue Plaintiff's strict liability claim premised on a failure to warn theory also fails. (ECF No. 16 at 18.) Defendants argue Plaintiff's complaint only provides conclusory allegations — nothing in the First Amended Complaint explains which warnings or materials Plaintiff's surgeon reviewed, which warnings were inadequate, and in what ways they were inadequate. (*Id.* at 19.) Specifically, Defendants contend Plaintiff fails to allege how the lack of or inadequate warnings would have altered her physician's conduct. (*Id.*) In opposition, Plaintiff argues the First Amended Complaint states a plausible claim for strict liability based on a failure to warn theory and charts out the elements and corresponding allegations she claims are sufficient. (ECF No. 17 at 11–13.)

However, despite Plaintiff's arguments to the contrary, the allegations in the complaint are entirely conclusory and simply regurgitate the legal standard. This is insufficient at this juncture. For example, Plaintiff alleges Defendants had specific knowledge the Grasper tool was "defective and dangerous" or could and should have reasonably known "by application of scientific knowledge available at the time the [Grasper tool] was manufactured, designed and built[.]" (ECF No. 13 ¶ 27.) This is simply a bare legal conclusion unsupported by any factual allegations. *Cf. Tapia v. Davol, Inc.*, 116 F. Supp. 3d 1149, 1158 (S.D. Cal. 2015) (finding "Plaintiff sufficiently alleged what Defendant failed to warn about"). To allege a plausible claim for a failure to warn, Plaintiff should include allegations that "identify which danger was not warned against, explain that the danger was substantial, and that the danger was known or reasonably knowable, or explain how any warning that was given was inadequate." *Marroquin v. Pfizer, Inc.*, 367 F. Supp. 3d 1152, 1161 (E.D. Cal. 2019) (collecting cases).

Accordingly, to the extent Plaintiff seeks to bring her strict liability claim based on a failure to warn theory, such a claim is DISMISSED with leave to amend. *Lopez*, 203 F.3d at

1130.

B. Negligence

Defendants also move to dismiss Plaintiff's negligence claim for the same reasons it seeks to dismiss Plaintiff's strict liability claim. (ECF No. 16 at 3.) In opposition, Plaintiff argues she has plausibly stated a claim for negligence. (ECF No. 17 at 14–17.)

The theories of negligence and strict liability parallel and supplement each other[.]" *Bettencourt v. Hennessy Indus., Inc.*, 205 Cal. App. 4th 1103, 1118 (2012). To recover against a manufacturer under either theory, "a plaintiff must prove that a defect caused injury." *Merrill v. Navegar, Inc.*, 26 Cal. 4th 465, 479 (2001) (citation omitted). However, under a negligence theory, a plaintiff must also prove "an additional element, namely, that the defect in the product was due to negligence of the defendant." *Id.* (internal quotation and citation omitted).

Plaintiff alleges Defendants negligently designed and manufactured the Grasper tool rendering it "unsafe, dangerous and hazardous" and negligently failed to provide sufficient warnings. (ECF No. 13 ¶ 28; ECF NO. 17 at 12.) As a direct result of Defendants' negligence, Plaintiff alleges the Grasper tool failed during her surgery and resulted in a piece of the product being left inside her, which caused her pain. (ECF No. 13 ¶ 41; ECF No. 17 at 16–17.) However, the same deficiencies discussed above with Plaintiff's strict liability claim apply to Plaintiff's negligence claim here. Plaintiff's First Amended Complaint fails to set forth factual allegations describing the manufacturing defect, how the defect differed from its intended design, and about what Defendants failed to warn Plaintiff's surgeons. Without such factual allegations, Plaintiff does not sufficiently allege a negligent products liability claim. *See, e.g.*, *Garcia*, 617 F. Supp. 3d at 1175 (finding similarly).

Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiff's negligence claim with leave to amend. *Lopez*, 203 F.3d at 1130.

C. Breach of Warranty

Finally, Defendants contend Plaintiff fails to plausibly allege either an express or an implied warranty claim under California law. (ECF No. 16 at 20.) Plaintiff disagrees. (ECF No. 17 at 17.) The Court analyzes each type of warranty claim below.

i. Express Warranty

A breach of an express warranty occurs when "a seller makes a representation or promise to which its goods do not conform." *Sukonik v. Wright Med. Tech., Inc.*, No. 14-CV-08278-BRO-MRWX, 2015 WL 10682986, at *11 (C.D. Cal. Jan. 26, 2015) (citing *Brown v. Superior Ct.*, 44 Cal. 3d 1049, 1071 (1988)). To plead breach of an express warranty, Plaintiff must allege facts sufficient to show that "(1) the seller's statements constitute an affirmation of fact or promise or a description of the goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was breached." *Weinstat v. Dentsply Int'l, Inc.*, 180 Cal. App. 4th 1213, 1227 (2010). Additionally, Plaintiff "must adequately plead reliance or privity in order to succeed on a breach of express warranty claim." *Dei Rossi v. Whirlpool Corp.*, No. 2:12-CV-00125-TLN, 2015 WL 1932484, at *9 (E.D. Cal. Apr. 28, 2015) ("[R]eliance on a seller's representations may provide the basis for an express warranty claim even absent privity." (citation omitted)).

Defendants argue Plaintiff's vague allegations about the express warranty are insufficient. (ECF No. 16 at 21 (citing ECF No. 13 ¶ 44).) Further, Defendants contend there are no allegations about how plaintiff's surgeon reasonably relied on the warranty nor how the breach of the warranty caused plaintiff's injury. (*Id.*) In opposition, Plaintiff argues the allegations are sufficient. (ECF No. 17 at 17.) Specifically, Plaintiff cites paragraph forty-four in the First Amended Complaint where she alleges "Defendants . . . expressly . . . warranted that the subject product and all of its related parts and components would be of merchantable quality and reasonably fit for their intended purpose." (ECF No. 17 at 17 (citing ECF No. 13 ¶ 44).)

The Court finds these general and conclusory allegations do not sufficiently support an express warranty claim. It is unclear what Defendants are alleged to have stated, nor is it clear whether the unspecified statements were "the basis of the bargain." *See Weinstat*, 180 Cal. App. 4th at 1227. Without such factual allegations, it is unclear what express warranty is alleged to have been breached. *Id.* Furthermore, it is unclear whether Plaintiff is attempting to allege privity or reliance and Plaintiff provides no clarity on this point in opposition. *Coleman v. Bos. Sci. Corp.*, No. 1:10-CV-01968, 2011 WL 1532477, at *6 (E.D. Cal. Apr. 20, 2011) (finding insufficient allegations alleged regarding plaintiffs' reliance on defendant's representations).

Accordingly, to the extent Plaintiff's breach of warranty claim is based on an express warranty, Plaintiff's claim is DISMISSED with leave to amend.

ii. Implied Warranty[1]

Defendants argue Plaintiff's implied warranty claim should be dismissed based on privity, because Plaintiff does not — and cannot —– establish it. (ECF No. 16 at 21–22.) According to Defendants, patients lack the requisite privity in implantable medical product contexts. (*Id.* at 21.) In opposition, Plaintiff does not address Defendants' argument about her inability to establish privity as a patient under these circumstances. Instead, she simply argues she has alleged privity because the First Amended Complaint states Defendants "designed, built, manufactured, and sold the Endoclinch Grasper that injured" her. (ECF No. 17 at 17 (citing ECF No. 13 ¶¶ 2, 3.) Then, without citation to authority, Plaintiff contends privity exists because she was "a foreseeable and obvious end user for the [D]efendants[']product." (*Id.*)

Under California law, privity between parties is generally required for a breach of implied warranty claim. *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1023 (9th Cir. 2008). "A buyer and a seller stand in privity if they are in adjoining links of the distribution chain." *Id.* (citing *Osborne v. Subaru of Am. Inc.*, 198 Cal. App. 3d 646, 656 n.6 (1988)). However, an end consumer who buys from a retailer is not in privity with a manufacturer. *Id.* Despite Plaintiff's arguments to the contrary, privity does not turn on foreseeability. Accordingly, without more, the Court finds Plaintiff has not alleged privity between herself and the Defendants.

Moreover, as the Court of Appeal explained in *Blanco v. Baxter Healthcare Corp.*, a patient lacks the requisite privity to establish an implied warranty claim against a manufacturer in the implantable medical device context. 158 Cal. App. 4th 1039, 1059 (2008). According to the court in *Blanco*, because the patient relied on her physician's skill and judgment to select a suitable medical device and was not privy to the original transaction with the manufacturer, the patient could not establish privity. *Id.* The Court finds this reasoning applicable here. *See*

[1] The Court notes Plaintiff does not specify in the Complaint nor in her opposition whether she is alleging a breach of the implied warranty of merchantability or breach of the implied warranty of fitness for a particular purpose. As such, the Court refers generally to Plaintiff's "implied warranty" claim.

Adams v. I-Flow Corp., No. 09-CV-09550-R-SSX, 2010 WL 1339948, at *4 (C.D. Cal. Mar. 30, 2010); *see also Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1024 (9th Cir. 2008) (noting "California courts have painstakingly established the scope of the privity requirement . . . and a federal court sitting in diversity is not free to create new exceptions to it").

Accordingly, because privity cannot be established under these circumstances, to the extent Plaintiff's breach of warranty claim is based on the implied warranty, Plaintiff's claim is DISMISSED without leave to amend. *See also Schwartz v. Wright Med. Tech., Inc.*, No. 14-CV-01615-JGB-SPX, 2014 WL 11320637, at *5 (C.D. Cal. Sept. 11, 2014) (finding the same and dismissing claim without leave to amend); *Coleman*, 2011 WL 1532477, at *6 (dismissing patients' implied warranty claims against implantable medical device manufacturers with prejudice); *Tapia*, 116 F. Supp. 3d at 1160 (dismissing breach of implied warranty claim with prejudice for lack of privity between patient and manufacturer of implanted medical devices).

IV. CONCLUSION

Accordingly, for the reasons set forth above, the Court GRANTS Defendants' motion (ECF No. 16) and GRANTS in part Plaintiff's request to amend (ECF No. 17) as follows:

1. Plaintiff's strict liability and negligence claims are DISMISSED with leave to amend;
2. Plaintiff's breach of warranty claim is DISMISSED. To the extent Plaintiff's breach of warranty claim is based on an express warranty, Plaintiff's claim is DISMISSED with leave to amend. To the extent Plaintiff's claim is based on an implied warranty, the claim is DISMISSED without leave to amend.

Plaintiff may file an amended complaint no later than thirty (30) days after the electronic filing date of this Order. If Plaintiff files an amended complaint, Defendants shall file any responsive pleading no later than twenty-one (21) days from the filing date of the amended complaint.

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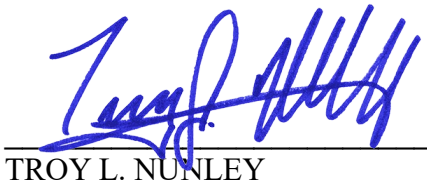
IT IS SO ORDERED.

Date: January 22, 2025



TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE